

)  
 Petition of New England Power Company for )  
 Approval of the Divestiture of the Seabrook )  
 Nuclear Power Station ) D.T.E. 02-33  
 )

## I. INTRODUCTION

2. NEP, a subsidiary of National Grid USA, is an electric company as defined under G.L. c. 164, §1. NEP is headquartered at 25 Research Drive, Westborough, Massachusetts, and has a 9.95766 percent joint ownership interest in Seabrook.

4. In support of this Petition, NEP attaches the following exhibits:

- Exhibit 1      Prefiled testimony of Terry L. Schwennesen, General Counsel to The Narragansett Electric Company and Vice President for New England Power Company (“Schwennesen Testimony”).
- Exhibit 2      Prefiled testimony of Paul M. Dabbar, Vice President in the Natural Resources Group at J.P. Morgan Securities Inc. (“JPMorgan”) (“Dabbar Testimony”).
- Exhibit 3      Purchase and Sale Agreement (“PSA”) entered into on April 13, 2002 between NEP and other Selling Owners of Seabrook, and the buyer, FPLE Energy Seabrook, LLC.

## **II.      STANDARD OF REVIEW**

5.      The Department has general supervisory authority of all gas and electric companies under Massachusetts General Laws Chapter 164, § 76. Approval of the sale transaction is requested pursuant to G.L. c. 164, § 76 and pursuant to the requirement that the “sale process is equitable and maximizes the value of the existing generation facilities being sold” (*see Boston Edison Company and Commonwealth Electric Company*, D.T.E. 98-119/D.T.E. 98-126, at 5 (1999)). The sale transaction is also consistent with NEP’s Restructuring Settlement (*Massachusetts Electric Company*, D.P.U. 96-25 (1997)).

## **III.      SEABROOK SALE**

6.      Seabrook was offered for sale in a public auction. The auction was conducted pursuant to New Hampshire Revised Statutes (Annotated) (“RSA”) 369-B:3, IV(b)(13) and Connecticut General Statutes § 16-244g (“CT Act”). Each of the joint owners, except for the Massachusetts Municipal Wholesale Electric Company (“MMWEC”), the Taunton Municipal Lighting Company and the Hudson Light & Power

Department (collectively, the “Non-Selling Owners”), have offered their joint ownership interest for sale.<sup>1</sup>

7. Pursuant to RSA 369-B:3, IV(b)(13) and Section 6(b) of the CT Act, the New Hampshire Public Utilities Commission (“NHPUC”) and the Connecticut Department of Public Utility Control (“CT DPUC”) selected JPMorgan, a nationally prominent investment-banking firm, to conduct the auction. The auction was supervised by the Commission Staff of the NHPUC and the CT DPUC’s specially appointed Utility Operations Management and Analysis auction team.

8. The Auction began with an information-gathering stage, during which period JPMorgan solicited interest from entities known or believed to be potential bidders based upon their previous public statements, their position in the industry or their participation in recent sales of nuclear assets. JPMorgan prepared a preliminary letter and a press release to notify all potential bidders of the Auction. The next step in the Auction, which proceeded concurrently with the solicitation efforts described above, involved the preparation of a confidential Offering Memorandum (“OM”) that described the Assets and the Auction in detail. JPMorgan provided the OM to potential bidders who met the requirements established by JPMorgan for eligibility to participate in the Auction.

---

<sup>1</sup> The Selling Owners of Seabrook and their respective ownership interests approximately are:

North Atlantic Energy Corporation	35.98%
The United Illuminating Company	17.50%
Great Bay Power Corporation	12.13%
New England Power Company	9.96%
The Connecticut Light and Power Company	4.06%
Canal Electric Company	3.52%
Little Bay Power Corporation	2.90%
New Hampshire Electric Cooperative, Inc.	<u>2.17%</u>
Total:	88.23%

9. In conducting the auction, JPMorgan used a confidential process, consisting of an initial identification of potential bidders, followed by the bidder due diligence procedure, in which bidders were given access to an electronic data room. Bidders were allowed to submit confidential questions and participate in individual pre-bid meetings. The binding bids ultimately submitted were subject only to on-site verification. JPMorgan, together with the NHPUC and CT DPUC, chose the winning bidder. The auction process is described in detail in Exhibit 2, the Dabbar Testimony.

10. On April 15, 2002, JPMorgan announced that FPLE Seabrook was the winning bidder. FPLE Seabrook is an indirect wholly-owned special-purpose subsidiary of FPL Energy, LLC, the independent power producer subsidiary of FPL Group. FPLE Seabrook is a wholly-owned direct subsidiary of ESI Energy, LLC, which is, in turn, a wholly-owned direct subsidiary of FPL Energy, LLC. FPL Energy, LLC is a leader in producing electricity from clean and renewable fuels and is the nation's leader in wind energy, operating a 5,117-megawatt portfolio of plants in 14 states. FPL Group, through Florida Power and Light Company, also owns and operates four nuclear generating units similar in design to Seabrook. The company's Turkey Point site includes two pressurized water reactors with 1,386-megawatts of generating capacity located 25 miles south of Miami. FPL Group's 1,678-megawatt St. Lucie site also includes two pressurized water reactors located near Ft. Pierce and Stuart adjacent to the Atlantic Ocean. Both Turkey Point and St. Lucie have exemplary safety and operational records based upon the Nuclear Regulatory Commission's safety indicators as well as the World Association of Nuclear Operators' overall performance index.

11. The primary terms of the PSA include the following:

- a. FPLE Seabrook will purchase 88.23 percent of Seabrook (including Unit 1 and the partially constructed Unit 2) for \$836.6 million, subject to certain adjustments at closing.
- b. FPLE Seabrook will assume the decommissioning liability for the acquired portion of Seabrook, and also will assume the existing decommissioning trust funds of the sellers, with the sellers responsible for any top-off payment to meet the decommissioning funding requirements of the New Hampshire Nuclear Decommissioning Financing Committee. FPLE Seabrook has also provided a parent company guarantee that it will fully fund its proportionate share of projected cost of decommissioning in a manner consistent with New Hampshire statutory requirements.
- c. There will be no power purchase obligation between FPLE Seabrook and the sellers of Seabrook.

12. Under Section 23.1 of the Agreement for Joint Ownership, Construction and Operation of the New Hampshire Nuclear Units (“JOA”), NEP is required to offer its 9.95766% ownership share to the Non-Selling Owners of Seabrook. On April 18, 2002, NEP sent its offer to the Non-Selling Owners, which contained terms that were equivalent to those provided by FPL Seabrook. The Non-Selling Owners have until June 18, 2002 to respond to NEP’s offer. This is described further in the Schwennesen testimony.

13. In reviewing a petition to divest generation assets, the Department considers the consistency of the proposed transaction with the company’s Restructuring

Plan (including any Restructuring Settlement) and the Massachusetts Electric Industry Restructuring Act (Chapter 164 of the Acts of 1997) (the “Restructuring Act”). The Department has held that consistency is shown if the “sale process is equitable and maximizes the value of the existing generation facilities being sold.” *Boston Edison Company* and *Commonwealth Electric Company*, D.T.E. 98-119/D.T.E. 98-126, at 5 (1999). The Department has also determined that a sale process is deemed equitable and structured to maximize the value of the existing generation facilities being sold if the company establishes that it used a “competitive auction or sale” that ensured “complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale.” *Id.* As stated above and detailed in the Dabbar Testimony, the sale was accomplished through a competitive auction that provided complete access to all data by all participants. JPMorgan conducted the auction under the supervision of two government agencies, the NHPUC and the CT DPUC, for the express purpose of ensuring fair and equitable treatment and to maximize the value of the assets being sold.

14. By meeting the Department’s specific standards for the sale of generation assets, NEP has mitigated transition costs, to the maximum extent possible, as required by G.L. c. 164, §§1A, and 1G.

15. The findings sought by NEP in connection with the sale of Seabrook assets parallel those made by the Department with regard to the divestiture of the Millstone nuclear plant in D.T.E. 00-68 (2000). NEP has not proposed and does not seek

any adjustment to its Transition Charges (as the term is defined in Chapter 164 of the General Laws).<sup>2</sup>

16. NEP's request in this proceeding is entirely consistent with the requests of other electric companies for approval of asset divestitures that have been granted by the Department. *See Western Massachusetts Electric Company, New England Power Company, and Fitchburg Gas and Electric Light Company*, D.T.E. 00-68 (2000) (Millstone); *Western Massachusetts Electric Company*, D.T.E. 99-74 (2000); *Western Massachusetts Electric Company*, D.T.E. 99-29 (1999); *Boston Edison Company*, D.T.E. 98-119 (1999); *Cambridge Electric Light Company, Commonwealth Electric Company and Canal Electric Company*, D.T.E. 98-78/83 (1998); *Boston Edison Company*, D.T.E. 97-113 (1998); and *Massachusetts Electric Company*, D.T.E. 97-94 (1998).

#### **IV. EWG STATUS**

17. As a condition to closing the sale of the Seabrook interests to FPLE Seabrook, FPLE Seabrook must obtain the determination of the Federal Energy Regulatory Commission ("FERC") that it is an "exempt wholesale generator" ("EWG") under Section 32 of PUHCA. EWG status is critical to FPLE Seabrook because EWG status allows it to own and operate the assets without regulation under PUHCA. Without EWG status the Seabrook assets would be virtually unmarketable.

18. FERC's EWG finding must be based, in part, on a determination that the purchased facilities are "eligible facilities."<sup>3</sup> If such facilities have been in the seller's or

---

<sup>2</sup> In accordance with the Restructuring Settlement approved by the Department in D.P.U./D.T.E. 96-25-B, NEP's Contract Termination Charge ("CTC") is a FERC-approved rate which is annually reconciled to reflect actual costs and/or proceeds recovered by NEP. This is described further in the Schwennesen Testimony.

its affiliate's retail rates as of October 24, 1992, the determination that they are "eligible facilities" depends, in part, on specific findings by the state regulatory commission having jurisdiction over the rates of seller or the rates and charges of the affiliate of such registered holding company. Because the assets to be sold were in the retail rates of NEP's affiliate, Massachusetts Electric Company, as of October 24, 1992, and because the Department had jurisdiction over such rates, specific findings must be obtained from the Department in order to obtain the required "eligible facilities" findings from FERC.

19. The specific findings required of the Department are that allowing the divested assets to be "eligible facilities":

- (a) will benefit consumers;
- (b) is in the public interest; and
- (c) does not violate state law.<sup>4</sup>

---

<sup>3</sup> Section 32(a)(2) of PUHCA defines "eligible facility" as:

a facility, wherever located, which is either (A) used for the generation of electric energy exclusively for sale at wholesale, or (B) used for the generation of electric energy and leased to one or more public utility companies, Provided, however, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 834e of Title 16.

<sup>4</sup> In pertinent part, Section 32(c) of PUHCA (15 U.S.C.A. § 79z-5a(c)) provides as follows:

(c) State Consent for Existing Rate-Based Facilities. If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make specific determination that allowing such facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate State law; Provided, that in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:



20. The findings set forth in the prior enumerated paragraph should be granted for several reasons. First, consumers will benefit because additional generating capacity will be available for sale in the competitive market. Because the competitive market is expected to function more efficiently than the rate-regulated system of generation, consumers should benefit through lower prices. This benefit has been recognized by the Department in the context of electric utility restructuring in Massachusetts. Second, designation of the facilities as eligible facilities is in the public interest because it supports the Massachusetts' stated goals to eliminate the vertical integration of the electric utility industry and to make electricity generation a competitive function. Third, such designation does not violate state law. On the contrary, the sale is completely consistent with the Restructuring Act and G.L. c. 164.

21. The findings herein requested under Section 32 of PUHCA are identical to those requested by electric companies and granted by the Department in other asset divestiture proceedings. *See, e.g., Western Massachusetts Electric Company, New England Power Company and Fitchburg Gas and Electric Light Company*, D.T.E. 00-68 (2000) (Millstone), *Western Massachusetts Electric Company*, D.T.E. 99-29 (1999); *Western Massachusetts Electric Company*, D.T.E. 99-74 (2000).

## **V. OTHER REGULATORY APPROVALS AND REQUEST FOR EXPEDITED TREATMENT**

22. Apart from the Department's approval in this proceeding, the Seabrook sale is contingent on obtaining additional regulatory approvals. Action by the Nuclear

---

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company;....

Regulatory Commission, FERC, the Federal Trade Commission, Internal Revenue Service and other state public utility commissions is necessary.

23. The Department's approval, and that of the other state commissions considering this transaction, must be issued before FPLE Seabrook can file its FERC application for EWG status. Because the FERC process is likely to take up to 60 days, and because the parties are targeting a closing in late November 2002, a decision from the Department is needed by August 30, 2002. NEP further requests that the Department act on and approve this Petition contemporaneously with the two other petitions filed on this date relating to the Seabrook sale: (1) Petition for Approvals Relating to Asset Divestiture filed by Canal Electric Company, Cambridge Electric Light Company, and Commonwealth Electric Company (*see* D.T.E. 02-34), and (2) The Connecticut Light and Power Company's Petition for Findings Under Section 32(c) of the Public Utility Holding Company Act of 1935 (*see* D.T.E. 02-35).

## **VI. FINDINGS**

**WHEREFORE**, NEP respectfully requests that the Department approve the sale of NEP's 9.95766 percent joint ownership interest in Seabrook, and in doing so, make the following findings:

- A. The sale process by which the Seabrook assets were offered for sale ensured complete, uninhibited non-discriminatory access to all data and information by all parties seeking to participate in the auction and therefore was equitable.
- B. The divestiture process maximized the value of the generating assets for customers.

- C. The sale of the Seabrook assets is consistent with NEP's Restructuring Settlement.
- D. Any and all authorizations that may be required under Massachusetts law for the sale of NEP's Seabrook assets, as described herein, have been satisfied, including, without limitation, approval pursuant to G.L. c. 164, §§ 1A through 1H and 76.
- E. Allowing Seabrook assets to be "eligible facilities" under PUHCA, § 32(c): (1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law.

F. NEP also respectfully requests that the Department grant any other approvals and make any other findings that may be necessary or appropriate to facilitate the sale of the assets as described herein.

**NEW ENGLAND POWER COMPANY**

By Its Attorney,

---

Laura S. Olton  
National Grid USA Service Company  
25 Research Drive  
Westborough, Massachusetts 01582  
(508) 389-3075  
laura.olton@us.ngrid.com

Dated: May 17, 2002